

The University of Chicago

THE STATUS IN INTERNATIONAL
LAW OF THE FRAGMENTS OF
THE OTTOMAN EMPIRE

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

1935

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WILBUR WALLACE WHITE

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One of the most obvious phenomena to be observed regarding political entities is that of continuous change. In fact, over a period of time such entities evidence what might be termed phases of their "life." An interesting study of a part of this evolution is that of the dissolution of empire, which in recent times has been characterized by a substitution of newer nation States for the parent empire. In the present study the writer has pursued an illuminating and rather unusual method of approach to this process, namely on the basis of status in international law. The work has been developed with two distinct points of view in mind and has brought out three important features in the disintegration of the Ottoman Empire.

The first point of view is what might be called the static one. This has involved a study of the legal materials--treaties, customs, judicial decisions and declarations--relevant to each change in the status of each of the fragments of the Empire. This analysis has resulted in a determination of the legal status as such of these fragments, and shows at any given time the degree to which the entity was in law a sovereign member of the family of nations.

The second, or dynamic, point of view, has involved the process of gaining or losing status in the first sense. In this relation there have been utilized what might loosely be termed "historical" materials, as opposed to "legal" materials, largely composed of diplomatic correspondence and secondary historical works.

This point of view has yielded two further features in the dissolution of the Empire. One is the conclusions that may be reached regarding the forces which were largely responsible for the disruption of the domain of the Sultans. In perhaps no other area may the results of those two potent forces of modern political development, imperialism and nationalism, be seen functioning with greater intensity, and their combined effect has been the amputations of these fragments of the body politic of the Sick Man of Europe.

The final feature of major interest that has evolved in the present study is based also on the second point of view and to a certain extent has involved both "legal" and "historical" materials--the method by which these changes in status were brought about. The recurrence of these changes is obvious. But in spite of the fact that the whole Eastern Question was one of transition, before the World War each new step was to all intents and purposes treated as final, i.e., no provision was made for subsequent change. As a result, each time the forces of disruption became so strong as to demand a change there was no legal provision for it in the light of existing agreements, and since at least one State advocating the status quo stood on its rights, the only possibility of change was by an illegal act. Almost invariably in the major changes in status this also created a

tension which resulted in war.¹

The emancipation of the subject races of Turkey-in-Europe forms a pattern which follows this outline with almost unfailing regularity. Throughout the nineteenth century the expected demise of the Sick Man only served to whet the appetites of the Powers who fully expected to partition or to cast their benevolent protection over the domains of the Sultans. Their plans went awry, however, when they came in conflict with the aspirations of the subject peoples. Thenceforth the struggle was a three-sided affair, with Turkey continually on the losing side. No provision having been made, however, for any peaceful change, any attempt at change usually involved war, and the peace treaties following wars usually signalized the successive steps.

Greece attained its independence by a successful revolution, which, before completion, drew Russia into war with Turkey. The Treaty of Adrianople, moreover, definitely marked the autonomy of Serbia and the Principalities. The Crimean War, not itself waged by the Balkan peoples, resulted in a slight change in Serbia and the Principalities also by placing them under a joint protection and a joint guarantee respectively. A series of wars in the 1870's ended in the Congress of Berlin which gave these same peoples and Montenegro their independence and recognized Bulgaria as autonomous. In Albania also autonomy was secured by revolt and independence indirectly acquired as a result of the Balkan Wars. The main changes of boundaries also usually resulted from wars, and were often provided for in these same treaties of peace.

Furthermore, the changes which did not involve war were almost always diametrically opposed to the existing legal status

¹Cf. Josef L. Kunz, "The Law of Nations, Static and Dynamic," American Journal of International Law, XXVII (October, 1933), 630-50 (cited hereafter as AJIL).

quo. The outstanding changes of this nature were the union of the Principalities, Roumania's securing of a foreign prince, the union of Bulgaria and Eastern Roumelia, the declaration of independence of Bulgaria, and the annexation of Bosnia and the Herzegovina--all essentially illegal steps. Numerous blockades and interventions by the Powers also contributed to or prevented other minor changes.

The pattern of Turkey-in-Africa was more simple. In general there was less cut-throat competition between a large number of Powers and nationalism proved here to be a far less potent factor than in the Balkans. In both Egypt and Algeria the only Powers vitally concerned were Great Britain and France, and when each had quieted the other there was practically no objection to the resulting occupations. In the case of Tunis, France stole the march on a weaker Italy, and in Tripoli, Italy secured practically a free hand. In all of these cases the power of Turkey was so feeble that with their confreres disposed of the various Powers were able to enter these spheres almost at will. Here was imperialism in one of its cruder forms: the power policy of the European States went practically unhindered with the result that the Regencies and Egypt became colonies or actual or virtual protectorates.

The World War itself showed no apparent changes of the patterns in these respective areas. The only change noticeable in Africa was the British proclamation of a formal protectorate over Egypt at the beginning of the War, and its continuation and recognition during the War and at its close. In Europe the conflict between the Great Powers, between the Balkan peoples, and between the two groups, showed itself in new boundaries for all the States in the peninsula.

In spite of the way the patterns seemed to run true to

form, however, there were in the peace treaties the germs of change, some of which showed themselves particularly in the treatment accorded the peoples in the amputated portions of Turkey-in-Asia. Had the robust ideologies of the pre-war era continued in full force it is difficult to see why the Arab countries should not have received the summary treatment meted out to the areas in North Africa. It is certain that the series of secret agreements between the Powers regarding the division of the territory had fairly well taken care of the competitive angle of the question. It is relatively certain, also, that the Powers could have forced their dominion, for a time at least, upon the recalcitrant Arabs. At best the Arab peoples could have gained independence only through the painful process of revolt as the Balkan races had done. Why were the agreements not executed?

There seems to be but one reason for this. For the first time in the history of man, most of the major governments of the world had to take their respective populations into their confidence with respect to matters of high politics. By the most high-powered propaganda that the world has ever seen² the democratic nations sought to get and hold the backing of their people. The "war-aims" of the various States, particularly those of the Allied and Associated Powers epitomized by President Wilson's Fourteen Points, became the catch-words of the conflict. Months of this propaganda had a telling effect, so much so that these statements regarding self-determination began to be taken seriously by many of the peoples on the side of the Allies, and, most important, by the American President himself. Now one disadvantage of the democratic process, even in war, is the length of time it takes to

²See Harold D. Lasswell, Propaganda Technique in the World War (New York: A. A. Knopf, 1927), passim.

form public opinion and get a governmental response thereto. It was impossible, therefore, for the European Allies to speak of self-determination during the last days of the war and then in the peace treaties to return in toto to the old policy of pure partition. The mandate system represents a compromise between the old ideology and the new.³

If the mandate system, however, involved only this change, it still might be looked at askance. If these territories were to remain only in this uncertain status one might easily become cynical and inquire if these were not merely colonies or protectorates under another name, and likely to remain so until further bloodshed on the older patterns might lead to subsequent change. It is because this is not so, however, that the mandate system is worthy of extended notice. It is because the mandates provisions are not perpetual that they are of interest as one of those germs of peaceful, legal change included in the peace treaties.⁴

A further observation concerning these changes in the Ottoman Empire is of interest. Looked at in the perspective of history it is probably generally conceded that most of these changes were for the best. In almost every instance they were illegal; but in almost every instance they have subsequently been considered just and equitable.⁵ Moreover, for the most part,

³See Quincy Wright, Mandates under the League of Nations (Chicago: University of Chicago Press, 1930), pp. 8-25, 64 (cited hereafter as Wright, Mandates).

⁴See F. L. Schuman, International Politics (New York and London: McGraw-Hill Book Co., Inc., 1933), pp. 616-17.

⁵Cf. J. L. Brierly, "The Shortcomings of International Law," British Year Book of International Law, 1924, p. 8 (cited hereafter as BYIL); also Sir John Fischer Williams, "Justiciable and Other Disputes," AJIL, XXVI (January, 1932), p. 36: "A claim to change existing international rights is not necessarily a morally wrong claim. Such a claim, ethically considered may be either a good or bad in character."

the major changes involved war. But even so, by and large it probably will be admitted, at least so far as they precluded worse struggles later, that the means justified the end. In other words, the changes of the nineteenth century even if they involved war, were worth it.

The twentieth century, however, presents a far different picture. The World War has shown that war no longer involves merely combat between selected professional groups in a relatively restricted area; it includes whole populations scattered all over the earth. Moreover, as the world has been painfully learning in recent years, the effects of wars do not cease with armistices or even the signing of peace treaties; years later there arises the specter of world-wide economic catastrophe. In the light of these changes it becomes obvious that change is no longer worth a war. And yet if there is anything to be gleaned from the opening observations, international changes most assuredly will not cease. Some such changes are inevitable. In the past they have almost invariably brought war situations. Today it is probably conceded by those with no immediate axe to grind, that general wars are no longer worth what few positive results they may achieve. It is imperative, therefore, that a system must be devised which will provide for just international change in an orderly, legal, and especially in a peaceful manner.

It is obvious that after the tremendous heritage of non-peaceful change which the world possesses, that the transition to the new emphasis likely will be neither abrupt nor complete. But attention has been turned to the problem⁶ and there are in evidence

⁶See especially Sir John Fischer Williams, International Change and International Peace (London: Oxford University Press, H. Milford, 1932) (cited hereafter as Williams, International Change); the same writer, Chapters on Current International Law

certain beginning steps which may result in a considerable enlargement in the sphere of peaceful settlement of disputes.

Pre-war examples of such legal peaceable change admittedly are not entirely lacking, but in general provide few precedents on which future changes can be based. Two outstanding instances were in the area under discussion, the transfer of the Ionian Islands from a British protectorate to Greece in 1863, and the Greek acquisition of Thessaly in 1881,⁷ but practically no similar situation exists in the same general area today. The world at large offers also other examples of change by negotiation,⁸ as well as by marriage and consequent inheritance,⁹ purchase,¹⁰ recognition of states¹¹ and governmental experimentation.¹² But by and large these exceptions prove the rule--such changes were far more often made illegally and/or by war--and in general there was little provision for mechanisms for the handling of international disputes.

The advent of the League of Nations, however, has marked the institution of certain new procedures and the extension of

and the League of Nations (New York, London: Longmans, Green & Co., 1929), chaps. 11-14 (cited hereafter as Williams, Current Chapters); Kunz, op. cit., p. 630; Brierly, BYIL, 1924, p. 6; Alejandro Alvarez, "The New International Law," Transactions of the Grotius Society, XV (1929), 35 (cited hereafter as TGS).

⁷See pp. 81, 66-67 of the complete dissertation, to be found only in the University of Chicago Libraries.

⁸Sweden's resignation of Pomerania, France's acquisition of Nice and Savoy, and the division of Norway and Sweden (Williams, International Change, p. 18).

⁹Austria, and the union of England and Scotland (ibid., p. 15).

¹⁰The acquisition by the United States of Louisiana, Florida, and Alaska (ibid., p. 17).

¹¹Panama (ibid., p. 19).

¹²The relationships of Great Britain to the Dominions and India (ibid.).

old ones for peaceful settlement. International disputes have often been divided into two categories, justiciable and political, the most recent clear distinction being that the former is one of rights, as opposed to the latter which is a question in which at least one of the parties wishes to change the existing rights.¹³ Justiciable disputes in general are susceptible of arbitration or adjudication, and in this field the League Covenant has made a definite contribution. Arbitration is an institution of long standing,¹⁴ and under the League it has attained an even more important place in the machinery for the settlement of international disputes.¹⁵ But the important contribution of the League in the sphere of justiciable disputes was in the establishment of the first real international court to give decisions and opinions on questions submitted to it. There was a definite place for such a tribunal, as evidenced by the work it has done.¹⁶ It is probable

¹³Williams, AJIL, January, 1932, p. 31; Current Chapters, pp. 45-47; and International Change, pp. v, 12-13. See also the three kinds of definitions of "justiciable" in John B. Whitton and John Withrow Brewer, "Problems Raised by the General Treaty of Inter-American Arbitration," AJIL, XXV (July, 1931), 450-52. Brierly (BYIL, 1924, p. 6) refers to a "reserved domain" from international law which is essentially the field of Williams' "political disputes. Kunz (op. cit., p. 634) denies the distinction because conflicts invariably have a mixture of both. This writer (ibid.) classes conflicts in two groups, those as to what the law is and those arising out of the desire of one party to change the law, and calls them respectively static and dynamic--more or less Williams' distinction. Williams admits (AJIL, January, 1932, p. 34) the mixture of disputes, but thinks the respective elements can be separated. See also Charles G. Fenwick and others, "The Distinction between Legal and Political Questions," American Society of International Law, Proceedings, 1924, pp. 44-83, 126-45.

¹⁴Henry S. Fraser, "A Sketch of the History of International Arbitration," Cornell Law Quarterly, XI (February, 1926), 179-208; also Amos S. Hershey, The Essentials of International Public Law and Organization (revised ed.; New York: The Macmillan Co., 1930), pp. 45-46, 54, 93-94, 466 ff.

¹⁵Arts. 12 and 13 of the Covenant. See Hershey, op. cit., pp. 470-71.

¹⁶See especially Manley O. Hudson, The World Court 1921-1934 (4th ed.; Boston: World Peace Foundation, 1934), passim.

that if the Court had done no more than render only the decisions and opinions which it has given in the area here considered, of which the most famous were the Lotus and the Mavrommatis Concessions cases¹⁷ and question of the Turco-Iraqi frontier¹⁸ respectively, it would be considered as a worthwhile institution.¹⁹

Although these mechanisms have admittedly been of service in the peaceful settlement of disputes, they hardly provide an adequate solution in the sphere of the more basic international difficulties. It has been stated that for the most part these institutions are capable of handling only questions which it is conceded involve the respective rights of the parties. But the more serious international frictions occur in the so-called political realm in which the "legal" procedures are incapable of providing a solution.²⁰ Moreover it may well be that a change--the kind that has so often kindled war in the past--even in the face of existing legalities, may be just, may be in the "higher international interest."²¹ The real problem then, is the provision for

¹⁷Permanent Court of International Justice, Publications, Ser. A, Nos. 2, 5, 10, 11 (cited hereafter as PCIJ); also Hudson, op. cit., pp. 14, 18, 27, 45.

¹⁸PCIJ, Ser. B, No. 12.

¹⁹Other judgments in this area were ibid., Ser. A, No. 3, the interpretation of the Treaty of Neuilly, and No. 14 re the Serbian Loans; other opinions were ibid., Ser. B, No. 4, the Tunis-Morocco Nationality Decrees, No. 9 re the Monastery of Saint-Naoum and the Albanian Frontier, No. 10 re the Exchange of Greek and Turkish Populations, No. 14 re the Jurisdiction of the European Commission of the Danube, No. 16, the interpretation of the Greco-Turkish Agreement of December 1, 1926, No. 17 re the Greco-Bulgarian Communities, and Ser. A/B No. 45 re the Greco-Bulgarian Agreement of December 9, 1929 (Caphandaris-Molloff Agreement).

²⁰Williams, International Change, pp. 2-3; Alvarez, op. cit., pp. 46-48; H. Lauterpacht, Private Law Sources and Analogies of International Law (London, New York: Longmans, Green & Co., Ltd., 1927), p. 174 (cited hereafter as Lauterpacht, Private Law Sources).

²¹Williams, AJIL, January, 1931, pp. 31-32.

the peaceful settlement of international disputes of a political character, i.e. those in which one of the parties demands a change of existing rights on the ground of the higher interest of the community of States.

In this field also post-war experimentation has not been lacking. Some of the more obvious attempts at what might be regarded as peaceful settlement may be passed by briefly. The Geneva Protocol of 1924 was an attempt to label aggressors and prevent aggression, but it was admittedly an attempt to maintain the status quo.²² The Locarno Treaties likewise were no real contribution to the question of international change.²³ Similarly the whole discussion of sanctions provides no solution of the essential problem for they too are based on the legality of existing relations.²⁴ Even the establishment of a world state, improbable

²²Williams, International Change, pp. 38-42.

²³Ibid., p. 43; also Williams, Current Chapters, p. 49.

²⁴Williams, International Change, pp. 73-74; Brierly, op. cit., pp. 4-5. As Brierly says, those stressing sanctions make two assumptions which are not necessarily valid: first, that international law is weak because frequently broken with impunity, and second, that the present system of rules and principles is well adapted to State needs, so all would be well if States were only persuaded or compelled to conform. Williams (International Change, p. 74) adds two more assumptions, the presence of a single, central authority with sufficient power--and such a possibility is remote at present--and that sanctions will never be used against one's own State. He shows further that due to difference in number of individuals in the community and relation of the power of one to the whole that the analogy of domestic and international political organizations regarding punishment and sanctions is very weak. Then he goes on to say pointedly, "In the international world today an international military force is not needed when the preponderance of material power and moral influence is against the State which has broken or threatens to break the peace; when no such preponderance of power and influence exists a resort to an international force, if it were not--as is most probable--ineffective, would produce greater evils than it can cure." He also points out that a police force is one of the latest products of civilization. See also Edwin M. Borchard, "The 'Enforcement' of Peace by 'Sanctions,'" AJIL, XXVII (July, 1933), 518. But contra, see David D. Davies, The Problem of the Twentieth Century (London: E. Benn, Ltd., 1930). For a general discussion see Payson S. Wild,

and perhaps undesirable as it is, would not be likely to solve the problem.²⁵

The General Act of 1928²⁶ seems at first glance to be a step in the right direction. Provision is made for the settlement of legal disputes,²⁷ but in addition there were further provisions for Conciliation Commissions to study and suggest settlement in non-legal controversies.²⁸ As Sir John Fischer Williams points out, however, the weakness of these commissions is not so much their lack of final authority as their probable lack of necessary weight.²⁹ Moreover if the suggestions were not accepted, which they probably would not be by both parties, the question would become one for arbitration, i.e. one in which the legal view, or question of rights would prevail, which would be no real solution of the question of change.

The post-war period, however, has seen certain definite attempts to make provision for the possibility of international political change. One of these which in some ways has secured the most positive results is that referred to above, the Mandate

Jr., "Treaty Sanctions," AJIL, XXVI (July, 1932), 488; and James Brown Scott and others, "Sanctions," American Society of International Law, Proceedings, 1933, pp. 5-127. One can hardly take issue with the theory of sanctions, however, namely, that the price of taking the desired action will be out of all proportion to its results. In that case nations would doubtless address themselves with some seriousness to the problem of peaceful change.

²⁵Williams, International Change, pp. 27-30.

²⁶League of Nations, Treaty Series, XCIII, 343; Quincy Wright, "The General Act for the Pacific Settlement of International Disputes," AJIL, XXIV (July, 1930), 582.

²⁷Chap. 11 of the Act; Miroslas Gonsiorowski, "Political Arbitration under the General Act for the Pacific Settlement of International Disputes," AJIL, XXVII (July, 1933), 469.

²⁸Chap. 1 of the Act.

²⁹Williams, International Change, pp. 46-48. See also J. L. Brierly, "The General Act of Geneva, 1928," BYIL, XI (1930), 118, 120-24.

system. Article 22 of the Covenant stated that the ex-Turkish territories "can be provisionally recognized subject to the rendering of administrative assistance by a Mandatory until such time as they are able to stand alone." A study of these territories indicates the difficulties inherent in the different class A mandates, but it is worthy of comment that one of these mandates, Iraq, has fulfilled the requirements and by a perfectly legal and generally peaceful process has been translated into a State and accepted in the family of nations.³⁰ The essential of the system is the fulfillment of a condition precedent. The central problem is the criteria of the mandate's capacity to stand alone.³¹ But once ability is granted the way is open for a peaceable change.

Another important provision of the League system for the process of peaceful change is to be found in the conciliation and mediation functions of the League Council. Theoretically Article 11 of the Covenant provides merely for the prevention of war while under Article 15 there may be a proposal for an ultimate peaceful settlement.³² In practice, however, although most of the questions have arisen under Article 11³³ the problem of a possible settlement is apparently inherent regardless of which article is invoked.³⁴ The point of importance here is that a procedure is established by which a peaceful change may be made, and a solution found for the

³⁰See pp. 248-50 of the complete dissertation.

³¹See Walter Holmes Ritscher, Criteria of Capacity for Independence (Jerusalem: Syrian Orphanage Press, 1934), pp. 39-40; Luther H. Evans, "General Principles Governing the Termination of a Mandate," AJIL, XXVI (October, 1932), 735-58; Quincy Wright, "Proposed Termination of the Iraq Mandate," ibid., XXV (July, 1930), 436-46.

³²T. P. Conwell-Evans, The League Council in Action (London: Oxford University Press, H. Milford, 1929), pp. 10-15.

³³Ibid., pp. 125-27.

³⁴Williams, International Change, pp. 60-65.

settlement of a political dispute which in other circumstances might easily have led to war. There have been several cases in the area under discussion in which the Council has provided or assisted in a settlement and which alone have proved the value of this procedure: the Albanian-Yugoslav boundary dispute of 1921, the Turco-Iraqi frontier question of 1924, the Graeco-Bulgarian boundary controversy of 1925, and the problem of the Hungarian optants in 1923 and 1927.³⁵

Apparently a somewhat similar procedure is coming to be considered as inherent in the Pact of Paris.³⁶ Non-members of the League, under Article 17 of the Covenant can of course come under the jurisdiction of the Council, but it is probable that with its larger number of signatories the Pact will provide a more simple method of getting non-members to discuss the more volatile international questions. The very consultation of the States of the world on such problems, it is contended, will likely prove to be the most efficacious method of preserving peace.³⁷

There is one further sphere in which some progress apparently can be made. It often has been pointed out that one of the serious limitations of international law, especially as compared

³⁵Other disputes in the same area, some of scarcely less interest, have been those re the Bulgarian Comitadjis in 1922, the Tunis Nationality decrees, 1922, the bombardment of Corfu in 1923, the Monastery of Saint-Naoum, 1924, the exchange of Greek and Turkish Nationals, 1924, the Greco-Turkish boundary, 1926, and the Albanian minorities in Greece (Conwell-Evans, op. cit., passim).

³⁶C. G. Fenwick, "The Implication of Consultation' in the Pact of Paris," AJIL, XXVI (October, 1932), 787; Quincy Wright, "The Meaning of the Pact of Paris," ibid., XXVII (January, 1933), 39; Harry D. Gideonse (ed.), "An American Foreign Policy," Public Policy Pamphlet, No. 14 (Chicago: The University of Chicago Press, 1934), pp. 9-13.

³⁷Williams, International Change, pp. 54-58, 66-67.

with municipal law, is its lack of provision for legislation.³⁸ Legislation is perhaps the fundamental method by which States settle the problem of internal change, but it is obvious that this institution is distinctly limited as to international use. This is not to say that there has been absolutely no international legislation³⁹ but what apparently is desired is some method akin to the amending process for constituent treaties or international

³⁸Brierly, BYIL, 1924, p. 9; and "The Legislative Function in International Relations," Problems of Peace, 5th series (1930) (London: Humphrey Milford, 1931), p. 205. For the case for real international legislation in the sense in which the word is used in municipal law, see F. N. Keen, "World Legislation," TGS, XVI (1930), 1. This writer suggests the League Assembly could become the required body, acting through a simple or special majority, with perhaps ratification by "a certain proportion" of League members (*ibid.*, pp. 9-10). But for the difficulties of this plan see H. Lauterpacht, "The Absence of an International Legislature and the Compulsory Jurisdiction of International Tribunals," BYIL, XI (1930), 134, 141, 144. Williams insists that "political" disputes demand something analogous to "international legislation" (International Change, pp. 5, 13; AJIL, January, 1931, pp. 32, 35). Herbert A. Smith is probably referring to legislation in the stricter sense when he states "that the actual process of international law-making has not been substantially affected by the establishment of the new machinery under the League of Nations" ("International Law-Making," TGS, XVI [1930], 93). Lauterpacht, on the other hand, sees a possibility for development under the World Court in judicial law-making (BYIL, 1930, pp. 134, 144, 147). Of no little interest are the few hints dropped in a still further extension of peaceful settlement. Several writers refer to "equitable" solutions and "an 'international equity' in the broadest sense" (Williams, AJIL, January, 1931, pp. 31, 33; Brierly, BYIL, 1924, p. 15; Alvarez, *op. cit.*, p. 48). But Brierly goes so far as to refer to the power *ex aequo et bono* of arbitral bodies, which he says is essentially legislative (BYIL, 1930, p. 125; and "The Contribution of Law to Peace," Problems of Peace, 4th series [1929] [London: Humphrey Milford, 1930], p. 51). Williams also suggests that the Council may recommend solutions of international differences which may involve modifications of treaty arrangements, a power not strictly legal, but "equitable" in the sense in which Roman Praetors and English Chancellors made additions to the legal systems of their States," and thus develop precedence for the so-called "non-justiciable" disputes (Current Chapters, p. 82). See also *ibid.*, p. 63. Art. 28 of the General Act of 1928, specifically makes such provision in case no rule of law is applicable. See also Gonsiorowski, *op. cit.*, pp. 488-90.

³⁹See, for example, Manley O. Hudson, International Legislation (Washington: Carnegie Endowment for International Peace, 1931), *passim*.

organic law. Not that there have been none of these, too, for there do exist such great legal landmarks as the Treaties of Vienna, Paris, Berlin, and Versailles. The difficulty has been that in none except the last has there been any provision for subsequent amendments. Each was the result of a war situation. With the continuous process of change at work, however, subsequent amendment became inevitable, but since it was not provided for, war usually was required to bring it about. An exception to this was the invocation of the clausula rebus sic stantibus, which though it may conceivably have a limited validity in certain instances,⁴⁰ is universally condemned as a rationalization for the unilateral denunciation of a treaty.⁴¹ The two most notorious cases in which it has been used were both in the area under consideration--the Russian denunciation of the Black Sea Clauses of the Treaty of Paris in 1871 and the annexation of Bosnia and the Herzegovina by Austria-Hungary in 1908--and though the action was subsequently allowed to stand, it was maintained by the other Powers that legal recognition of the change was required.⁴²

⁴⁰In municipal law the doctrine pacta sunt servanda is limited by the necessity of giving effect to the real will of the parties or of safeguarding certain social values relating either to the public good or to the freedom and development of individuals (Lauterpacht, Private Law Sources, p. 168; and The Function of Law in the International Community [Oxford: The Clarendon Press, 1933], pp. 270-72). See also Williams, Current Chapters, pp. 87, 90-91, where the comparison is made with the English law of "frustration," though the term obsolescence is preferred. See also in Lauterpacht, The Function of Law in the International Community, the application of the theory of abuse of rights to international law--the theory that a legal right becomes unlawful if abused (pp. 298-306).

⁴¹Lauterpacht, Private Law Sources, pp. 168-70; Williams, Current Chapters, pp. 87-88.

⁴²The third important case was also in this area--the Russian freedom of Batoum in 1886 from the provisions of the Treaty of Berlin. See Lauterpacht, Private Law Sources, p. 170, and note; also Brierly, BYIL, 1924, p. 15.

The League Covenant, however, explicitly envisages the possibility of international change.⁴³ Article 19 reads as follows:

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world.

It must be admitted that so far it has not been successfully invoked and that discussions regarding it have tended to be limitations,⁴⁴ but it seems that this may possibly provide a wedge by which, in the future, peaceful reconsideration of international problems may be achieved.⁴⁵ Incidentally it should be remembered that the "constituent" treaties of the past were few and far between. It certainly would not be for the best to have this article used indiscriminately--even most legislation in municipal law is not continuously subject to change. But at least this article

⁴³Williams, Current Chapters, p. 81: "We have in this Article (XIX) a recognition of the fact that international duty does not always enjoin the maintenance of the *status quo*." Kunz (op. cit., p. 639) refers to it as "the exponent par excellence of the dynamic law of nations in the structure of the Covenant and the necessary correlative to the static Article X."

⁴⁴F. Llewellyn-Jones, "Treaty Revision and Article XIX of the Covenant of the League of Nations," TGS, XIX (1933), 13, 19-22; Kunz, op. cit., p. 644.

⁴⁵Williams, International Change, pp. 31-37. This writer thinks that the second part of the article might even apply to executed provisions, to which he and Kunz (op. cit., p. 642) deny the applicability of the *clausula rebus sic stantibus*, used even in its purely legal aspect (Current Chapters, pp. 92, 94). "The ground covered by Article 19 is not that of the doctrine of *rebus sic stantibus*. The importance of the article from the international lawyer's point of view is that it indicates a growing consciousness of the need of having in reserve a power, which even if for the present it acts by persuasion, is in essence a legislative power, to modify not merely existing international contractual obligations, but international conditions generally, in the interests, not merely of the parties to the treaty, but of the whole international community" (ibid., p. 109). "Certainly, Article XIX as it now stands must not be overestimated; but, on the other hand, it would be quite wrong to underestimate its far-reaching importance" (Kunz, op. cit., p. 641).

seems to provide an opening for the consideration of international questions which has not been available in the past.⁴⁶

These, then, seem to be the present-day provisions for this fundamental problem of international relations, the problem of peaceful change. It is certain that international difficulties may be solved more easily if there are at hand procedures under whose jurisdictions the questions may be considered--indeed it has been held that international organization, generally speaking, is perhaps the greatest step toward peace.⁴⁷ It is equally certain, however, that if these procedures are to be useful they must be utilized. To be used they must be trusted. And if they are to be trusted it may be necessary that there be developed throughout the world, especially in the light of the present influence of public opinion,⁴⁸ a reconsideration of certain of the old ideologies.

One of the fundamentals that is coming under suspicion is the traditional concept of sovereignty. The idea is apparently losing ground in both theory and practice. As Brierly has pointed out it is not primarily a legal but a philosophical conception,⁴⁹ one denoting superiority, and, while it may have validity within a State, it is impossible to use it literally in international

⁴⁶Ibid.: "It is the first time in the history of the law of nations that this new problem has been recognized in an international treaty which has come into force."

⁴⁷Pitman B. Potter, An Introduction to the Study of International Organization (3d ed.; New York: The Century Co., 1928), p. 281.

⁴⁸Alvarez, op. cit., p. 48.

⁴⁹BYIL, 1924, p. 12. Cf. the statements of Herbert A. Smith that sovereignty is not so much a legal principle as a political fact and that freedom of action by States is admittedly not entirely free (TGS, XVI, 95).

law. Furthermore, its usefulness in practice is questionable when such apparently sovereign attributes of a State as the right to dispose of territory and jurisdiction over persons and things within the State are admittedly subject to considerable qualification.⁵⁰

Another doctrine needing redefinition, apparently, is that of the perpetual binding force of treaties.⁵¹ Obviously this is a very delicate question. It requires care that the good faith between nations be not weakened.⁵² But it is time to admit that no treaty is likely to be perpetual and it is necessary to provide for some method of change beside war or unilateral denunciation. It is submitted that the steps outlined above may furnish the first attempts, admittedly halting, by which the desired end may be attained.

A third concept which may have to be revamped is the traditional idea of neutrality. In recent years the argument on this point has waxed extremely warm. There is much to be said for the traditional view,⁵³ and apparently in practice the doctrine is still in force,⁵⁴ but it seems that certain qualifications have been previsedged and it may be that this too will undergo an

⁵⁰Brierly, BYIL, 1924, pp. 13-14. See also Wright, Mandates, pp. 267-309, 328, 369, where the analogy is drawn between sovereignty and liberty, pointing out that the former may develop subject to law as the latter has done.

⁵¹Brierly, BYIL, 1924, pp. 15-16.

⁵²Ibid.; Williams, International Change, p. 76.

⁵³See especially John Bassett Moore, "An Appeal to Reason," Foreign Affairs, XI (July, 1933), 547-88; Edwin M. Borchard, "Realism v. Evangelism," AJIL, XXVIII (January, 1934), 108-17; and Philip C. Jessup, "The Birth, Death and Reincarnation of Neutrality," ibid., XXVI (October, 1932), 789-93.

⁵⁴George Grafton Wilson, "War and Neutrality," AJIL, XXVII (October, 1933), 724-25.

alteration in the future.⁵⁵

The late Ottoman Empire thus furnishes an interesting laboratory for the study of the dynamic changes in international law. Here, perhaps better than in any other single area, are seen the terrific forces which make for international change. In this limited sphere also perhaps better than in any other one, are noted the procedures by which, in the past, these changes have come about. Before the World War is seen an almost unbroken train of war and illegality. Since the war there have been certain procedures provided which conceivably make it possible to arrive at changes in status by legal steps and in a peaceable manner. It is conceded that these new procedures are not as strong as some could wish. To be strengthened they must grow by use. It is conceded, also, that they are not final, that the future may provide intelligent steps which may further the cause of peace. But they point the way which apparently the world must travel as an alternative to the way of war.

To secure their acceptance will be no easy matter, for it involves the revamping of traditional conceptions which man finds one of his most difficult tasks. But it seems that if the so-called civilized nations have been able, though only through a

⁵⁵Williams, International Change, p. 67; Wright, AJIL, January, 1933, pp. 39-61; Wright, "The United States and Neutrality," Public Policy Pamphlet, No. 17; Herbert W. Briggs and R. L. Buell, "American Neutrality in a Future War," Foreign Policy Association, Reports, XI (April 10, 1935), 26-36. See also Quincy Wright, Clyde Eagleton, and others, "Neutrality and Neutral Rights following the Pact of Paris," American Society of International Law, Proceedings, 1930, pp. 79-114; Charles E. Martin and others, "The Legal Position of War and Neutrality during the Last Twenty-five Years," ibid., 1921, pp. 137-79; and Charles Warren, "What are the Rights of Neutrals Now, in Practice?" and Philip C. Jessup and others, "Is Neutrality Essential?" ibid., 1933, pp. 128-74.

long and arduous process, to provide within themselves the mechanisms of peaceful change, these same nations may be able at some time to establish general procedures providing for peaceable change between themselves. In the meantime it seems that they are indulging in undue exaggeration to refer to themselves as civilized until such a time as they are able to provide for the problem of essential international change⁵⁶ without resort to the barbarities of modern war.

⁵⁶Brierly, BYIL, 1924, p. 9: "The society of States is not static; changes are perpetually taking place within it, and the only certain thing about its future is that it will continue to change."

